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Nils Zettervall

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EXAMINER

WEST, THOMAS C

ART UNIT

PAPER NUMBER

3621

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/586,564	ZETTERVALL, NILS	
	<b>Examiner</b>	<b>Art Unit</b>	
	THOMAS WEST	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8-13-08, 3-13-08</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is in reply to the US Application filed February 28, 2008.
2. Claims 1-13 are currently pending.
3. Claims 1-13 have been examined.

### ***Information Disclosure Statement***

4. The Information Disclosure Statements filed on August 13, 2008 and March 13, 2008 have been considered. Initialed copies of the Form 1449 are enclosed herewith.

### ***Drawings***

5. The drawings are objected to under 37 C.F.R. §1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore the following claimed features must be shown or the features cancelled from the claims. No new matter allowed.

- a. In claim 1, the “unique code” as recited in line 7.
- b. In claim 1, the “registration of the code” as recited in line 8.
- c. In claim 9, the “input means” as recited in line 16.
- d. In claim 9, “a passage” as recited in line 4.
- e. In claim 10, the “microwave controlled presence detector” as recited in line 2.
- f. In claim 11, the “optical detector” as recited in line 2.
- g. In claim 12, the “readable code” as recited in line 2.
- h. In claim 13, the “transponder” as recited in line 2.

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6. Corrected drawing sheets in compliance with 37 C.F.R. § 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 C.F.R. § 1.121(d). If the changes are not accepted by the Examiner, Applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

7. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some examples follow.

8. Claim 1 recites “switching-over the data collection device” in line 9. These phrase is indefinite because, to one of ordinary skill in this art, the metes and bounds of the phrase cannot be reasonably determined. To support this position, the Examiner notes the following:

- i. First, the Examiner has carefully reviewed the original specification and cannot

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locate a lexicographic definition with the required clarity, deliberateness, and precision.

Second, although the Examiner recognizes that each word within the phrase may have a particular meaning, the arrangement of these words within the context of this phrase does not reasonably apprise one of ordinary skill in this art the overall meaning of the claimed phrase. Third, the Examiner has again reviewed all documents of record in conjunction with MPEP §2141.03 including the original specification and claims. Therefore based at least upon the three points noted above and using the required precepts of English grammar, it is the Examiner's position that the phrases (as used in the context of these particular claims above) are neither lexicographically defined by Applicant nor known to those of ordinary skill in this art. However, if Applicant believes that the phrase is old and well known in the art, Applicant should (in his next appropriately filed response) expressly state on the record that the phrase is old and well known in the art and provide appropriate evidence in support thereof (*e.g.* a U.S. patent).

9. Upon receiving (1) Applicant's express statement that the phrase is old and well known in the art and (2) sufficient evidence in support thereof, the Examiner will withdraw this particular 35 U.S.C. §112, 2nd paragraph rejection.

10. Alternatively or if the term is not a term of art, to overcome this particular rejection, the Examiner respectfully suggests that Applicant define the phrase within the claims themselves.

11. In claim 1, the phrase "registration of the code" in line 8 is indefinite because the structure for a counter "registration of the code" can not be reasonably determined. The same analysis as applied to "switching-over the data collection device" above applies equally to this

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phrase as well. Moreover, it is unclear as to with whom or with what the claimed “registration” occurs.

12. In claim 1, the phrase “unregistered codes” in line 12 is indefinite because the structure for a counter “unregistered codes” can not be reasonably determined. The same analysis as applied to “switching-over the data collection device” above applies equally to this phrase as well.

13. In claim 9, the phrase “arranged in a passage” in line 4 is indefinite because the structure for a counter “arranged in a passage” can not be reasonably determined. The same analysis as applied to “switching-over the data collection device” above applies equally to this phrase as well.

14. In claim 9, the phrase “feeding out device” in line 6 is indefinite because the structure for a counter “feeding out device” can not be reasonably determined. The same analysis as applied to “switching-over the data collection device” above applies equally to this phrase as well.

15. In claim 9, it is unclear if its the “data collection device” or the “passage counter” that comprises the “means for counting the number of code carriers being fed out and the number of registered codes.” Appropriate correction is required.

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16. Also in claim 9, the structure for the phrase “arranged to record answers” in line 15 can not be reasonably determined.

17. In claim 9, the phrase “means for counting the number of code carriers being fed out and the number of registered codes” is a limitation that invokes 35 U.S.C. 112, sixth paragraph.

18. Also in claim 9, the phrase “input means” in line 16 is a limitation that invokes 35 U.S.C. 112, sixth paragraph.

19. However for these two phrases, the written description fails to clearly link and associate the corresponding structure for the claimed function. Applicant may:

(a) Amend the claim so that the claim limitation will no longer be interpreted as a limitation under 35 U.S.C. §112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter. See 35 U.S.C. §132(a).

20. If Applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, Applicant should clarify the record by amending the written description of the specification such that it expressly recites the corresponding structure for performing the claimed function and clearly links or associates the structure to the claimed function, without introducing any new matter. See 35 U.S.C. §132(a).

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21. The Examiner finds that because claims 1-13 are indefinite under 35 U.S.C. §112 2nd paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) (“Because the claims are indefinite, the claims, by definition, cannot be construed.”). However, in accordance with MPEP §2173.06 and the USPTO’s policy of trying to advance prosecution by providing art rejections even though these claim are indefinite, the claims are construed and the art is applied as much as practically possible.

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 1-13 are rejected under U.S.C. §103(a) as being unpatentable over Harris, US Patent No. 20080288276 in view of Jao, US Patent No. 200210056374.

**Claim 1:**

Harris, as shown, discloses the following limitations:

sequentially supplying individuals from the stream to the second set by  
transferring individuals from the first set at selected intervals, (42, 56)



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producing a unique code for each individual in the second set of individuals, (90)

activating a data collection device by registration of the code, after activation, switching-over the data collection device for recording of data by an input process, (44, 90)

storing and compiling recorded data in the data collection device. (44)

Harris, as shown, discloses limitations above, but does not disclose the following, but Jao does:

automatically recording in the data collection device any falling off of individuals from the selection by calculating the number of unregistered codes, and (222)

**Claims 2:**

A method according to claim 1, further including the step of transferring individuals from the first set to the second set at random intervals. (36)

**Claims 3:**

A method according to claim 1, further including the step of transferring individuals from the first set to the second set at predetermined intervals. (36)

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**Claims 4:**

A method according to claim 1, further including the step of carrying the code on a code carrier in the form of a queue number ticket having a queue number. (22)

**Claims 5:**

Harris, as shown, discloses the following limitations:

A method according to claim 4, also including the step of supplying individuals to the second set depending on the value of the queue number ticket. (22)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Harris to include the falling off, random selection, queue number, and ticket of Jao since this allows for a more complete tracking history of both participants and non-participants and random selection.

**Claims 6:**

Harris, as shown, discloses the following limitations:

A method according to claim 1, further including the step of providing a code carrier with an access code for access to the data collection device. (42-44)

**Claims 7:**

Harris, as shown, discloses the following limitations:

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A method according to claim 4, also including the step that the code carrier gives an electronically readable mark. (90)

**Claims 8:**

Harris, as shown, discloses the following limitations:

A method according to claim 1, also including the step of recording biometric data for each individual in the second set of individuals, wherein the biometric data forms the unique code. (69)

**Claims 9:**

Harris, as shown, discloses the following limitations:

A device for recording of data, comprising a data collection device (12) for recording information in connection with a field survey, wherein the data collection device (12) comprises a display (14) and input means, characterized in that a passage counter (16) is arranged in a passage, through which a stream of individuals forming the first set of individuals passes, (42)

that the passage counter (16) is connected to a feeding out device for feeding out code carriers to a selection of individuals of the first set depending on the number of individuals passing by, (64)

that each code carrier is associated with a unique code, (90)

that the data collection device (12) is adjustable, by registration of the unique code, from a locked mode to an open mode for inputting information, (44)

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that the data collection device (12) cooperates with the passage counter and comprises means for counting the number of code carriers being fed out and the number of registered codes, and (44)

that the data collection device (12) is arranged to record answers given on the input means. (44)

**Claims 10:**

Harris, as shown, discloses the following limitations:

A device according to claim 9, wherein the passage counter (16) comprises a microwave controlled presence detector. (42)

**Claims 11:**

Harris, as shown, discloses the following limitations:

A device according to claim 10, wherein the passage counter comprises an optical detector. (90)

**Claims 12:**

Harris, as shown, discloses the following limitations:

A device according to claim 9, wherein the code carrier (18) comprises a readable code. (44)

**Claims 13:**

Harris, as shown, discloses the following limitations:

A device according to claim 9, wherein the code carrier (18) comprises a transponder. (42)

***Claim Interpretation***

24. After careful review of the original specification, the Examiner is unable to locate any lexicographic definitions with the required clarity, deliberateness, and precision. See MPEP §2111.01 IV.

25. Accept for the “means for counting ... registered codes” and the “input means,” the Examiner finds that the other claim phrases in claims 1-13 fail Prong (A) as set forth in MPEP §2181 I. Therefore accept for the “means for counting ... registered codes” and the “input means,” the Examiner concludes that all other claim phrases do not invoke 35 U.S.C. §112, 6th paragraph. See also *Ex parte Miyazaki*, 89 USPQ2d 1207, 1215-16 (B.P.A.I. 2008)(precedential).

26. The Examiner hereby adopts the following definitions under the broadest reasonable interpretation standard. In accordance with *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997), the Examiner points to these other sources to support his interpretation of the claims. Additionally, these definitions are only a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language. Finally, the following list is not intended to be exhaustive in any way:

j. ***Device*** “(7) A hardware unit that is capable of performing some specific function.” The Authoritative Dictionary of IEEE Standards Terms, 7<sup>th</sup> Ed., IEEE, Inc., New York, NY, 12/2000.

k. ***Automatic*** “1 a : largely or wholly involuntary;” Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition, Merriam-Webster Inc., Springfield, M.A., 1997.

1. ***For*** “**1 a** — used as a function word to indicate purpose <a grant ~ studying medicine>” Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition, Merriam-Webster Inc., Springfield, M.A., 1997.

### ***Additional Findings of Fact***

27. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work, 7th Ed. by Ron White; and How Networks Work, 7th Ed. by Frank J. Derfler et. al. are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these two references are directed towards beginners (see *e.g.* “User Level Beginning . . .”), because of the references’ basic content (which is self-evident upon review of the references), and after further review of the entire application and all the art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that these two references are primarily directed towards those of low skill in this art. Because these two references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these two references.

### ***Conclusion***

28. The prior art made of record which is considered pertinent to Applicant’s disclosure is listed on the document titled ‘Notice of Reference Cited’ (“PTO-892”) Unless expressly noted otherwise by the Examiner, all documents listed on the PTO-892 are cited in their entirety.

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29. Applicant is respectfully reminded that any suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. To be especially clear, any suggestion or example provided in this Office Action (or in any future office action) does not constitute a formal requirement mandated by the Examiner.

m. Should Applicant decide to amend the claims, Applicant is also reminded that—like always—no new matter is allowed. The Examiner therefore leaves it up to Applicant to choose the precise claim language of the amendment in order to ensure that the amended language complies with 35 U.S.C. § 112 1st paragraph.

n. Independent of the requirements under 35 U.S.C. § 112 1st paragraph, Applicant is also respectfully reminded that when amending a particular claim, all claim terms must have clear support or antecedent basis in the specification. See 37 C.F.R. § 1.75(d)(1) and MPEP § 608.01(o). Should Applicant amend the claims such that the claim language no longer has clear support or antecedent basis in the specification, an objection to the specification may result. Therefore, in these situations where the amended claim language does not have clear support or antecedent basis in the specification and to prevent a subsequent ‘Objection to the Specification’ in the next office action, Applicant is encouraged to either (1) re-evaluate the amendment and change the claim language so the claims *do* have clear support or antecedent basis or, (2) amend the specification to ensure that the claim language does have clear support or antecedent basis. See again MPEP § 608.01(o) (¶3). Should Applicant choose to amend the specification, Applicant is reminded that—like always—no new matter in the specification is allowed. See 35

U.S.C. § 132(a). If Applicant has any questions on this matter, Applicant is encouraged to contact the Examiner via the telephone number listed below.

30. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Thomas West whose telephone number is 571-270-1236. The Examiner can normally be reached on M-R 7:30am - 5pm EST, ALT Fridays off.

31. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached on 571-272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

32. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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